IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.433 OF 2005

IN

SUIT NO.182 OF 1993

ALONG WITH

CHAMBER SUMMONS 432 OF 2005

IN

SUIT NO.183 OF 1993

Bhagwansingh G.Khushwah & Ors. ...Plaintiffs

Versus

Mascot Developers & Ors. ...Defendants

And

M/s.Dev Construction ...Proposed Respondent

.....

Mr.A.A.Joshi i/b G.Pillai for Plaintiffs.

Mr.Virag Tulzapurkar with Ms.Alpana Ghone i/b Kanga & Co. for Defendant No.10.

Mr.Ardeshir i/b Madekar & Co. for proposed Respondent.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 24, 2005.

P.C.

1. Heard Counsel for the parties. Perused

the pleadings.

2. These Applications are taken out by the Plaintiffs for amendment of the Plaint in terms of Schedule 1. Plaintiffs have proposed twofold amendments. Firstly, that proposed Respondent be added as Defendant No.11 after Defendant No.10 to the main title of the Suit. The second amendment sought is for correction of the name of Defendant No.10 by replacing the changed name of the Defendant No.10.

3. Insofar as the latter amendment is concerned, the same is not objected to, and can be granted by consent. However, Defendant No.10 as well as proposed Respondent have resisted amendment to the extent of impleading proposed Respondent as Defendant No.11 to the main title of the Suit. According to the Defendants and proposed Respondent, presence of proposed Respondent is neither necessary nor proper. It is stated that the Plaintiffs are not concerned with the construction of the building undertaken by the proposed Respondent at the instance of Defendant

No.10. The proposed Respondent is in the process of constructing building, which cannot be subject matter of the Suit instituted by the Plaintiffs.

4. On the other hand, Counsel for the Plaintiffs contends that the Plaintiffs had moved for interim relief by way of Notice of Motion No.895 of 1993 and 900 of 1993, which proceedings went right up to the Supreme Court. The Supreme Court vide order dated February 12, 1999 has directed the Defendants to reserve two flats in the proposed building, awaiting further orders of the Trial Court. Relying on the Supreme Court decision, it is contended that the Plaintiffs are entitled to seek relief even in respect of building under construction undertaken by the proposed Respondent. This submission does not commend to me.

5. It is not in dispute that when the matter went up to the Supreme Court at the interlocutory stage, proposal of building to be constructed by Defendant No.10 was in the pipeline. The proposal was for two buildings. One consisting of

residential flats and the other exclusively for commercial user. The direction of the Supreme Court to reserve two flats will have to be construed as referable to the first building already completed as per the said plan consisting of residential flats. The proposed Respondent, however, has been entrusted with the work of constructing the second building, which is for commercial user. If it is so, the direction to reserve two flats cannot be extended to the building under construction by proposed Respondent, though on the instructions of Defendant No.10. Viewed in this perspective, the proposed Respondent is neither a necessary nor a proper party.

6. To get over this position, Counsel for the Plaintiffs would contend that the Defendants were fully aware that the Plaintiffs were to be provided two residential flats in the building to be constructed abutting the road. However, the documents which are placed before me do not spell out this position. Besides, it appears that no such argument was canvassed before the Apex Court. It follows that the proposed building referred to

in the order of the Supreme Court will obviously be the building consisting of residential flats constructed by the Defendant No.10 and not to the another building to be constructed by proposed Respondent at the instance of Defendant No.10, which is exclusively for commercial user. It is reiterated by the Defendant No.10 that two residential flats are already set apart in terms of order of the Apex Court dated February 12, 1999. So understood, in my opinion, the presence of proposed Respondent can neither be said to be necessary or proper.

7. Accordingly, there is no reason to accede to the request of impleading proposed Respondent as Defendant No.11.

8. Accordingly, this Chamber Summons will partly succeed, only to the extent of permitting the Plaintiffs to amend the cause title by providing changed name of Defendant No.10 in terms of clause (2) of Schedule 1 to the Chamber Summons. No order as to costs. Amendment be carried out in four weeks.

9. Counsel for the Plaintiffs, at the outset, stated that reliefs in terms of prayer clauses (b) to (e) in the present Chamber Summons are not pressed as those reliefs are subject matter of separate Notice of Motion taken out by the Plaintiffs. That statement is recorded. All questions in that behalf are left open.

A.M.KHANWILKAR, J.